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## **At the Jerusalem District Court Sitting as a Court for Administrative Affairs**

AP 13110-02-12 D et al. v. The Minister of Interior et al.

Before the Honorable Judge Nava Ben Or

### **The Petitioners**

- 1.
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**  
Represented by counsel, Adv. Noa Diamond

v.

1. **The Minister of Interior**
2. **Head of Population, Immigration and Border Authority**
3. **Director of the East Jerusalem Population Administration Bureau**
4. **Chair of the Foreigners Appeal Committee**

Represented by the Jerusalem District Attorney, Adv. Achva Berman

### **Judgment**

1. This petition was initially filed with respect to two inter-related issues. As specified in the petition, petitioner 1 is a victim of abuse at the hands of her Israeli spouse, who has, for many years, refused to arrange her status in Israel, as part of his desire to control her and limit her freedom. When she managed to overcome her fears and file a complaint with the police regarding the violence, the abusive husband was indicted and sentenced to prison. The petitioner submitted a request to the Inter-Ministerial Committee for

Humanitarian Affairs for the arrangement of her status in Israel, as a victim of domestic violence, and requested that for as long as her case was pending, her status would be temporarily arranged in order to secure stability for herself and her children and enable her to work and provide for herself and her children. The Ministry of Interior refused to do so due to the fact that the petitioner had been staying in Israel illegally and had not yet been examined under the graduated family unification procedure. In addition to the specific case of petitioner 1, HaMoked: Center for the Defence of the Individual (hereinafter: the "**petitioner**") petitioned and requested the court to order the respondents to establish, in protocol, that foreign women who seek status in Israel under the circumstances of petitioner 1, and whose applications meet the threshold conditions for having their cases referred to the Inter-Ministerial Committee, receive temporary status in Israel even if they did not have an Israeli visa prior to the submission of the application.

While the petition was pending, the case of petitioner 1 was resolved and is no longer before us. The petition on the general issue remains to be discussed.

#### The Normative Framework

2. The issue at hand is governed by the Entry into Israel Law, 5712-1952 (hereinafter: the "**entry into Israel law**"), the Nationality Law, 5712-1952 (hereinafter: the "**nationality law**"), and the relevant interior ministry procedures, including interior ministry procedure 5.2.008 known as "Procedure for the Granting of Status to a Spouse Married to an Israeli Citizen (hereinafter: the "**graduated procedure**)"; interior ministry procedure 5.2.0017 known as "Procedure for Cessation of the Procedure for the Arrangement of Status of Spouses of Israelis" (hereinafter: the "**procedure for cessation of the graduated procedure**)"; and interior ministry procedure 5.2.0019 known as "Procedure for Cessation of the Graduated Procedure for the Arrangement of Status of Spouses of Israelis as a result of Violence by the Israeli Spouse" (hereinafter: "**violence procedure**").
3. There is no dispute that an individual who is not an Israeli citizen or who does not hold an "oleh"\* visa or an "oleh" certificate, does not have an inherent right to reside in Israel and that his residency therein is subject to a visa granted by the minister of interior or anyone on his behalf, all in accordance with the entry into Israel law. Furthermore, there is no dispute that the minister of interior has broad discretion which stems from the nature of the authority and the state's prerogative to determine who may enter its gates (HCJ 431/89 **Kendal v. Minister of Interior**, IsrSC 46(4) 505).

Section 7 of the nationality law enables a spouse of an Israeli citizen to obtain Israeli nationality even if he or she does not meet the conditions required under the regular naturalization process. Within the framework of his discretion, the respondent has established the above graduated procedure, the purpose of which is to secure the right to family life, to protect the integrity of the family unit and to refrain from forcing the Israeli spouse to choose between living in Israel without establishing a family with the foreign spouse and establishing the family unit outside Israel. Accordingly, for instance, the Supreme Court states in H CJ 4156/01 **Dimitrov v. The Ministry of Interior**, IsrSC 56(6) 289:

**"The approach of the nationality law, according to which the conditions for naturalization may be mitigated when the spouse of the individual wishing to naturalize is an Israeli citizen, is based on the desire to maintain the integrity of the family unit and the need to prevent a split in the nationality of the individuals who make it up."**

4. Due to the fact that status in Israel is not granted in a perfunctory manner, a graduated procedure has been established in the interior ministry protocols. The purpose of this procedure is to examine, gradually, over a significant period of time, the sincerity of the relationship between the Israeli spouse and the foreign spouse, the existence of a center of life in Israel, the absence of any security or criminal preclusions etc. Therefore, it is only natural that termination of the relationship between the spouses, Israeli and foreign, before the completion of the graduated procedure, may lead to the cessation of the graduated procedure and to the termination of the foreign spouse's residency in Israel. And indeed, the procedure for the cessation of the graduated procedure provides, as a general rule, that the process would be stopped upon the death of the Israeli spouse or in the event of divorce. However, sometimes, such cases involve significant humanitarian considerations which may justify granting status in Israel to the foreign spouse in spite of the termination of the spousal relationship. Therefore, the procedure stipulates exceptions to the above rule. Accordingly, for instance, when the graduated procedure is severed due to the death of the Israeli spouse, but the foreign spouse has, in the meanwhile, lived in Israel for a long period of time and has assimilated in the country to the extent that it may be said that his/her ties with Israel are stronger and more significant than his/her ties with his/her country of origin, or when the spouses have children together and the circumstances justify granting the foreign spouse status in Israel despite the fact that the marital relationship has terminated based on considerations pertaining to the welfare of the children. In such cases, when certain threshold conditions are met, such

as the duration of the graduated procedure, the matter of the foreign spouse is referred to the Inter-Ministerial Committee for review.

5. The above described procedure regulates the cessation of the graduated process in a general manner. In addition, the ministry of interior has established a special procedure, concerning the cessation of the graduated procedure due to violence by the Israeli spouse and severance of the marital relationship as a result thereof. The violence procedure provides for a more lenient process as compared to the general procedure, and strives to balance between the desire to protect the foreign spouse, who was a victim of violent acts by the Israeli spouse, and the fact that upon the termination of the spousal relationship, the basic rationale for granting the foreign spouse status in Israel no longer exists. Similar to the procedure for the cessation of a graduated procedure, a status application submitted under the violence procedure will also be referred for review by the Inter-Ministerial Committee, but under more lenient threshold conditions. To have the applicant's status application referred to the committee, it is sufficient that there had been a sincere marital relationship, following which the spouses commenced a graduated procedure, that the foreign spouse has held an A/5 visa for a year as part of this procedure and that the occurrence of a violent event has been proven. It should also be noted that the criteria the committee applies when examining such status application are less strict than those guiding it in the examination of applications under the above general procedure. However, even when the marital relationship is severed due to violence by the Israeli spouse, the foreign spouse's ties to Israel are examined relative to his/her ties with his/her country of origin.

#### The Petition

6. The petitioner presents an extensive and scholarly description of the harsh and painful social phenomenon of abused women. Within the framework of its arguments, the petitioner discusses the motive of gaining control over the life of the battered woman, by perpetrating different types of violent acts against her, which are not necessarily limited to physical violence. The petitioner describes the psychological process victimized women endure, a process in which they lose their sense of self and their ability to deal with various entities such as banks, schools, workplace supervisors etc. The emotional world of these women is characterized by well known psychological phenomena such as disassociation and social isolation, post traumatic symptoms, shame, self-blame, depression etc. The difficulty to leave the violent spouse results from the helplessness that arises from the recurring experience of violence that cannot be predicted or prevented and which causes the women to lose their ability to plan ahead and try to initiate a change in their situation (in that regard see, for instance, CrimA 6353/94 **Carmela Buchbut v. The State of Israel**, IsrSC 49(3), 647; CrimA 7844/09 **A v. The State of Israel**, dated June 2, 2010).
7. These difficulties are coupled by an additional and unique difficulty when the victimized woman is an immigrant in a foreign country who is cut off from her family and friends, does not speak the local language, is not familiar with the

relevant supporting institutions and, therefore, naturally refrains from contacting law enforcement agencies under such circumstances. In such an event, the abusive husband may use the fact that he is a local who is responsible for the arrangement of the status of his wife in the country as an additional tool to gain control over her life. Accordingly, for instance, he might threaten to break up the relationships and inform the ministry of interior so that the woman would be deported and sent back to her homeland.

8. These phenomena, described by the petitioner in its petition, are what lead the respondent, as specified above, to establish a special and more lenient procedure for reviewing cases of foreign spouses whose marital relationship was severed due to violence by the Israeli spouse, out of a recognition for the public interest in encouraging victimized women to complain and in so doing, cut off their destructive dependency on the abusive husband. And indeed, the violence procedure contains a provision pursuant to which a residency visa held by a foreign spouse would be extended until such time as the application is resolved.

The petitioner claims that it is specifically in cases in which the status of victimized women was never formalized, that there is stronger justification for incorporating into the procedure a provision pursuant to which such women would be granted temporary status in Israel while the application was pending. As specified above, it is argued that the status [of these women] was never formalized as part of the violence inflicted upon them, since the husbands used the lack of status as an additional tool to gain control over their wives and intimidate them. In order to encourage them to go out and complain, they should be allowed to remain in Israel legally until such time as their applications are resolved.

9. From the outset, the respondent argued in his response that the fact that according to the violence procedure a status applicant would not be deported from Israel until such time as his/her application is resolved, even if he/she never held a residency visa as required by law, was sufficient. The respondent explained that there was no justification to grant the applicant status in Israel until an examination of his/her ties with Israel relative to his/her ties with his/her country of origin took place, since the mere proof of violence did not justify the granting of status. The period during which the application is under review is an interim period, and a person whose status in Israel was never arranged was never examined under the regular tests for the granting of status, such as the sincerity of the marital relationship prior to its severance, the absence of a security or criminal preclusion, the maintenance of a center of life in Israel, etc. The ties with Israel relative to the ties with the country of origin were certainly not examined. The respondent was of the opinion that under such circumstances, the current state of affairs should remain as it is, meaning that the foreign spouse should not be deported from Israel until the application is resolved, but he/she should not be granted a residency visa before his/her right to receive same is reviewed by the committee.

The respondent indicated that a foreign spouse whose residency has never been arranged was illegally present in Israel, and that it should not be taken for

granted as an un-refutable fact, that the failure to arrange the residency was necessarily used by the Israeli spouse, as a tool to control the foreign spouse. In fact, so it has been argued, petitioner's position, if accepted, nullifies the need to review the specific humanitarian aspect of the application, suggesting that status in Israel should be granted to any applicant who was a victim of violence. In addition, the respondent argued that although the domestic violence phenomenon was harsh, other humanitarian cases just as harsh are also reviewed by the Inter-Ministerial Committee. Accepting petitioner's position would inevitably lead to the implementation of a similar arrangement to all status applicants before their applications are reviewed by the competent body.

10. During a hearing held in the petition, I indicated that, on the face of it, there is a difficulty with respect to cases in which the head of the desk decides that an applicant's matter should be referred to the Inter-Ministerial Committee, meaning, that the "threshold conditions" have been met and the application was found eligible for review on its merits. Due to the long duration of the hearings held in these cases before the committee and in view of the provisions of the procedure – during that entire period, the status applicant is unable to provide for him/herself and/or his/her children, in the absence of legal status in Israel.
11. After he considered the matter, the respondent stated that he did not find any reason to change the procedure, in view of the considerations specified above. However, in order to shorten the period between the submission of the status application and the resolution therein, he notified, firstly, in a notice dated June 4, 2012, that in setting the date of the hearing before the Inter-Ministerial Committee priority would be given, *ex gratia*, to status applicants who were victims of violence and who met the requirements of the procedure, provided that the spouses had children together and that an indictment had been filed against the violent spouse. The petitioner commented on this notice, following which the respondent reconsidered the difficulties pointed out at by the petitioner, and in a notice dated July 23, 2012 he stated as follows:

**"Priority of the first degree shall be given to processing cases of victims of violence who do not have a valid visa and who meet the threshold conditions of the violence procedure. This priority shall not be limited by additional conditions (which were specified in our previous notice, i.e., cases in which the spouses have children together and an indictment was filed against the violent spouse).**

**The priority in processing cases of victims of violence as specified above shall apply to all processing stages of the application, commencing from the preparation of the file in the bureau, the processing in the authority's headquarters until a resolution is made by the head of the desk concerning the referral of the file to the Inter-Ministerial Committee, and until the referral of the file for a hearing before the Inter-Ministerial Committee at the earliest date**

**set after the decision of the head of the desk."** (Emphases in original).

The respondent is of the opinion that the shortening of the interim period is a good and reasonable solution, and points out in his statement that the cases in which status applicants under the violence procedure do not hold any visa prior to the submission of the application are rare, and that in most cases, the status applicant holds a visa, the validity of which is extended in accordance with the procedure.

### **Discussion**

12. In view of respondent's undertaking to give priority of the first degree to processing cases of victims of violence who do not hold a valid visa and who meet the threshold conditions of the procedure, without subjecting such priority to any additional conditions and to apply such priority to all processing stages of the application, there is no cause to order the respondent to change the procedure itself.
13. As specified above, the violence procedure is concerned with the granting of status in Israel when the initial justification underlying granting such status no longer exists. The marital relationship has been severed, the Israeli spouse no longer faces the unacceptable choice between giving up his desire to establish a family with the foreign spouse and giving up the continuation of his life in Israel, and the integrity of the family unit is no longer relevant. Nevertheless, and as stated by the Supreme Court in AAA 8611/08 **Prihawett Zewaldi v. The Minister of Interior et al.** (dated March 18, 2010), the rights to establish a family and to maintain the family unit are the premise for the above procedure, and they may have an influence on the balance between the immigration policy of Israel, which like any other sovereign state has broad discretion to prevent foreigners from establishing their permanent residence therein, and other considerations justifying granting status to a foreign spouse despite the fact that the marital relationship has ended. And indeed, the additional considerations which should be taken into account in weighing the status of the foreign spouse upon termination of the marital relationship are set forth in the violence procedure. As indicated in the above judgment, these considerations may be divided into two groups. The first group relates to public considerations, the purpose of which is to encourage victimized women to break the abusive relationships. This purpose reaches beyond the protection of the particular interests of the status applicant who has been victimized by her spouse to the public interest of having such a phenomenon eradicated. The other group relates to considerations involving the specific case of the status applicant. In that regard, the Supreme Court has discussed the consideration involving the legitimate expectation of the foreign spouse, who has commenced to arrange his/her status in Israel, and in as much as the marital relationship was severed for reasons not in his/her control, his/her legitimate expectation in that regard was even greater. In addition, the Supreme Court

has also pointed out that the consideration of "most ties" was an important factor in weighing a status application by an individual who was victimized by her Israeli spouse. And in the words of the Supreme Court:

**"It may be said that the condition of effective ties allows to examine the extent to which the status applicant is foreign to Israel and Israeli society. Accordingly, a woman who married an Israeli spouse and then left her children, friends and work-place in her country of origin, but separated from her husband a few weeks later – before she managed to assimilate in Israeli society and become an integral part thereof – may be regarded as someone who remains, to a large extent, a "foreigner", even if the separation occurred due to the violence of the spouse. This example demonstrates that although there is merit to appellant's arguments that a woman who has commenced a graduated procedure often still has substantial ties with her country of origin, it cannot be said that comparing between the ties with Israel and the ties with the country of origin is unreasonable."**

The court continues to state that in examining the ties, the respondent should take into consideration the public interest in eradicating the phenomenon of violence against women as well as the unique situation of a victimized woman, who, due to the violence, had become accustomed to a life of dependency and isolation, which does not enable to establish social and family relations and to assimilate in Israel. Nevertheless, as indicated above, the Supreme Court is not of the opinion that being a victim of violence constitutes independent grounds for receiving status in Israel.

14. An additional issue that should be taken into account and which was discussed by the Supreme Court in the above judgment, is the duration of the illegal residency of the status applicant in Israel. **"Complete disregard for this issue in examining the ties of the status applicant to Israel"** the court states **"may actually lead to a situation in which the sinner profits from his sin."**
15. And indeed, it seems that an assumption that failure to arrange the status of a woman who is a victim of violence always stems from the Israeli spouse's desire to control her life, cannot be accepted. As indicated in respondent's response, and I have not been presented with any data to the contrary, the great majority of status applicants who are victims of violence are women who reside in Israel under a legal residency visa. Only a minority have no legal status. The illegal residency is a consideration, which, as indicated by the Supreme Court, should be weighed by the respondent in examining ties to Israel even when the status application is submitted by a victim of violence. If the respondent discovers that the illegality of the residency results from a deliberate failure to arrange the status on the part of the abusive spouse, it seems that it would not be appropriate to have the woman suffer the consequences of such illegality. However, this is a factual matter which should



be examined. Accepting petitioner's position that once the application meets the threshold conditions justifying referral of the matter to the Inter-Ministerial Committee, the victim of violence should be granted temporary status in Israel, is incompatible with the factual examination that is required for review of the application.

16. According to the petitioner, there is a great similarity between this group of victims and women victims of violence [*sic*], and, in accordance with the procedure for granting status to victims of slavery and human trafficking for slavery and slave labor (respondent's procedure number 6.3.2008) once a determination is made that there is *prima facie* evidence that the status applicant is a victim in accordance with said procedure, he/she is immediately entitled to receive a B/1 temporary visa for three months, and, if the victim is a witness in legal proceedings, the temporary visa is extended until such proceedings are concluded. The petitioner therefore argues that the same rule should be applied to women victims of violence who apply for status in Israel after the marital relationship is severed. I do not accept this argument and I am of the opinion, as respondent argues, that these two groups cannot be compared. The purpose of granting the visa in the first case is a temporary purpose of giving testimony in a legal proceeding and rehabilitation – in accordance with international standards that Israel has assumed upon itself, and upon the termination of the aforesaid, the victim leaves Israel. In our case, the purpose of granting the visa is ultimately to examine a crime victim's permanent residency in Israel, despite the fact that the initial rationale for the commencement of this process no longer exists. This examination is conducted based on a factual investigation, including, *inter alia*, the examination of the ties to Israel relative to the ties to the country of origin, and it is conducted by the Inter-Ministerial Committee.

17. Given all of the above, respondent's undertaking to shorten the examination process of applications submitted by victims of violence, from start to end, without any conditions such as shared children and an indictment having been filed against the abusive spouse, seems reasonable to me. Nevertheless, clearly, monitoring and collecting data concerning the time periods that elapse until a resolution is made in applications of this sort, the number of cases of women victims of violence who do not hold a legal residency visa and additional relevant factual data may necessitate a re-examination of this issue. The factual infrastructure presented to me did not justify intervention at the present time.

The petition is rejected.

The secretariat shall provide a copy of the above judgment to parties' counsel.

Given today, 14 Av 5772, August 2, 2012, in the absence of the parties.

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\* Translator note: An oleh – a Jewish immigrant who entered under the [Law of Return 5710-1950](#).